
**APPEALS BOARD
UTAH LABOR COMMISSION**

JEFFERY J. COX,

Petitioner,

vs.

**SAVAGE INDUSTRIES and
TRANSPORT INSURANCE CO.,**

Respondents.

**ORDER DISMISSING
MOTION FOR REVIEW**

Case No. 04-0340

Savage Industries and its insurance carrier, Transport Insurance Co., (referred to jointly as “Savage” hereafter) ask the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Marlowe's decision of December 28, 2005, which ordered Savage to pay attorney's fees to David Williams for representation of Jeffery J. Cox in his claim for medical benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Appeals Board exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. Cox injured his back in a work accident at Savage on September 23, 1991. Previous proceedings before the Utah Industrial Commission, predecessor to the current Labor Commission, established that Mr. Cox's back injury was compensable under the Utah Workers' Compensation Act. During the years immediately following the accident, Mr. Cox received medical benefits and disability compensation for his injury. Mr. Cox's entitlement to those benefits is not now in dispute.

During 2003 Mr. Cox experienced additional problems with his back. His physician recommended surgery, and on April 29, 2004, Mr. Cox filed an application for hearing with the Labor Commission's Adjudication Division to compel Savage to pay for the surgery. Savage denied liability. Judge Marlowe was assigned to adjudicate the dispute.

Mr. Cox underwent back surgery on June 15, 2004. Judge Marlowe held an evidentiary hearing on Mr. Cox's claim on November 4, 2004. On May 18, 2005, Judge Marlowe issued her first decision. In that decision, Judge Marlowe found Mr. Cox's recent surgery medically necessary as a result of the original work injury in 1991. Judge Marlowe ordered Savage to pay the reasonable costs of the surgery. Furthermore, relying on § 34A-1-309(4) of the Utah Workers' Compensation Act, Judge Marlowe found Savage liable for Mr. Cox's attorney's fees in this matter. Judge Marlowe's first decision did not determine the amount of such fees but, instead, referred the parties to the formula for computing fees established by the Commission's rule R602-2-4.D.

ORDER DISMISSING MOTION FOR REVIEW
JEFFREY J. COX
PAGE 2 OF 3

Savage paid Mr. Cox's medical expenses as required by Judge Marlowe's first order and also tendered payment of \$354 to Mr. Williams, Mr. Cox's attorney, as attorney's fees. Mr. Williams declined to accept that payment and on November 25, 2005, Mr. Cox filed a motion asking Judge Marlowe to: 1) compel Savage to submit an accounting of all expenses it had paid for Mr. Cox's recent medical care; and 2) determine the amount of attorney's fees due Mr. Williams pursuant to § 34A-1-309(4) and rule R602-2-4(D). Judge Marlowe granted Cox's motion and, after receiving Savage's statement of the medical expenses it had paid, entered her second decision on December 28, 2005. This decision ordered Savage to pay \$6,895.69 in attorney's fees directly to Mr. Williams. Savage filed its motion for review of Judge Marlowe's second decision on January 18, 2006.

Savage's motion for review does not contest Mr. Cox's right to payment of his medical expenses, but instead raises the sole argument that Savage is not liable for attorney's fees in this matter. Savage supports this argument on three grounds: 1) § 34A-1-309(4), the statutory provision Judge Marlowe relied on to award attorney's fees, was not enacted until 1997 and cannot be applied to impose additional liability on Savage with respect to Mr. Cox's 1991 work injury; 2) even if § 34A-1-309(4) can be applied to Mr. Cox's claim, the statute's requirement of full use of alternative dispute mechanisms has not been satisfied; and 3) the Commission lacks statutory authority to order Savage to pay "add on" attorney's fees. Mr. Cox has responded to each of Savage's foregoing arguments and has raised the additional argument that Savage's motion for review is untimely because it was not filed within 30 days after Judge Marlowe's first decision.

DISCUSSION AND CONCLUSIONS OF LAW

The threshold issue before the Appeals Board is whether Savage filed its motion for review within the time limit established by the Utah Workers' Compensation Act and the Utah Administrative Procedures Act, Title 63G, Chapter 4, Utah Code Annotated. Because the arguments raised by Savage's motion for review pertain entirely to Judge Marlowe's first decision, the Appeals Board considers the timeliness of Savage's motion for review as to that decision.

Section 63G-4-301(1) of the Administrative Procedures Act allows 30 days for a party aggrieved by an ALJ's decision to file a written request for review. Section 34A-2-801 of the Utah Workers' Compensation Act likewise provides that, unless a party appeals the decision of an ALJ within 30 days, the decision "is a final order of the commission." In this case, Savage's underlying liability for attorney's fees was established by Judge Marlowe's first decision. Savage failed to file a timely appeal of that decision. Consequently, the decision became final 30 days after it was issued. Therefore, the Appeals Board has no authority to consider the merits of Savage's untimely arguments challenging the propriety of Judge Marlowe's award of attorney's fees.

ORDER DISMISSING MOTION FOR REVIEW
JEFFREY J. COX
PAGE 3 OF 3

ORDER

The Appeals Board dismisses Savage's motion for review as untimely. Judge Marlowe's decisions in this matter remain in effect. It is so ordered.

Dated this 16th day of December, 2008.

Colleen S. Colton, Chair

Patricia S. Drawe

Joseph E. Hatch

NOTICE OF APPEAL RIGHTS

Any party may ask the Appeals Board of the Utah Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Appeals Board within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.